Attachment B

CBA
COLORADO BAR ASSOCIATION
Established in 1897

HB 13-1138. Concerning Public Benefit Corporations
By Rep. Pete Lee and Sen. John Kefalas

The Colorado Bar Association (CBA) requests your support of HB 13-1138 & the Strike Below amendment proposed in the Senate Business Labor and Technology Committee

This bill creates a new class of Colorado companies called Public Benefit Corporations ("PBCs"), which pursue a public benefit purpose in addition to seeking profits. Historically, there have been two types of Colorado corporations: for-profit business corporations which pursue profit maximization for the benefit of its shareholders, and nonprofit corporations which pursue charitable, religious and other social and public goals. In a business corporation, a director who puts social or public benefit ahead of profit maximization may be violating his or her duty to the shareholders. This legislation provides flexibility to business corporations to pursue public benefit purposes (described forth in the PBC's articles of incorporation (which are publicly available at the Secretary of State's website), even at the cost of reducing profits.

As originally introduced, H.B. 13-1138 provided for the authorization of benefit corporations by amendment to the Colorado Business Corporation Act. The current bill is a significant amendment to the bill as originally introduced and reflects a breakthrough compromise between the sponsors and their associates and BLab (Pennsylvania nonprofit corporation) the Alliance for a Sustainable Colorado and a number of Colorado businesses that opposed HB 13-1138 in the House and who had originally proposed much different benefit corporation legislation in 2011 and 2012.

- A business corporation can become a "public benefit corporation" either upon formation or with the consent of 2/3 of its shareholders. Shareholders who do not consent to the designation will have dissenters' rights.

- The bill includes detailed notification requirements to ensure that those who become shareholders of a PBC are aware of the nature of the corporation – i.e., that it will also pursue public benefits rather than pure profit maximization. As a result, shareholders and investors will be able to make an informed decision about whether they wish to invest in such a corporation.

- When a PBC is formed the shareholders decide the nature of the public benefit to be sought after. The term "public benefit" means "one or more positive effects or reduction of negative effects on one or more categories of persons, entities, communities, or interests other than shareholders in their capacities as shareholders, including effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technical nature."

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- In their decision-making, corporate directors are required to balance: (i) the pecuniary interests of the shareholders, (ii) the interests of those materially affected by the corporation's conduct, and (iii) the public benefits identified in the articles of incorporation. Clause (ii) reflects the principal difference between the obligations of a for-profit corporation that may attempt to adopt a public benefit purpose as compared to a PBC. The directors of the PBC must balance the interests of those materially affected by the PNC's conduct, including employees, customers, suppliers, their operating communities, and even their competitors. Directors are protected from breach of fiduciary duty claims when they do so.

- Shareholders may bring an action against a PBC or its directors for failing to pursue the public benefit, but members of the public may not do so.

- PBCs must publish reports that address how the PBC pursued its public benefit purpose and what issues hindered the PBC from pursuing its public benefit purpose. The report must also set forth an assessment of the overall social and environmental performance of the PBC against a third party standard, although the assessment can be a self-assessment and does not need to be audited or certified by any third party. The process and rationale for selecting or changing any third party standard against which the PBC's performance is assessed.

This amended bill is now based on a bill being considered in Delaware which has been praised by B Lab Company at http://www.bcorporation.net/what-are-b-corps/legislation. Unlike the Delaware proposal which requires 90 percent approval to become a PBC, the Colorado sponsors have elected to continue the two-thirds requirement from the original bill. In addition, the bill contains the reporting requirements from the original bill (as amended in the House Business Labor, Economic, & Workforce Development committee) rather than the biennial reporting requirements of the Delaware proposal.

A goal of this bill is to attract social entrepreneurs and socially responsible "impact" investors to Colorado. It offers a flexible approach empowering shareholders to decide what type of general or specific benefits to pursue, in lieu of profit maximization, and how they want to govern their entity.

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